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IN THE
COURT OF APPEALS OF INDIANA

RODNEY PLUMLEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 01A02-0611-CR-971
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ADAMS CIRCUIT COURT
The Honorable Frederick A. Schurger, Judge
Cause No. 01C01-0501-FC-3
Cause No. 01C01-0501-FC-7
Cause No. 01C01-0504-FC-10

April 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Rodney Plumley pled guilty to three counts of forgery, each a Class C felony. The trial court sentenced Plumley to four years for each count, to be served consecutively. Plumley now appeals, raising the sole issue of whether this twelve-year aggregate sentence is inappropriate in light of his character and the nature of the offense. We affirm, concluding that Plumley's sentence is not inappropriate.

Facts and Procedural History

On October 24, 2004, Plumley applied for and obtained a driver's license using another man's identity. He later presented two checks drawn on this man's account to Monroe County Corner Deli so that he could buy lottery tickets.

Plumley entered into a plea agreement in which he pled guilty to three counts of forgery stemming from these events, in exchange for a dismissal of one additional count of forgery and one count of attempted forgery. The plea agreement recommended that the time served for each count be capped at four years and that each count run consecutively, for a maximum total sentence of twelve years.

Plumley did not appear at his sentencing hearing on April 27, 2006, and a warrant was issued for his arrest. Plumley turned himself in approximately two months later. He then attempted to withdraw his guilty plea, but on July 7, 2006, the trial court denied Plumley's motion and ordered him to undergo a psychiatric and psychological evaluation to determine his competence to participate in the sentencing proceedings. He was determined to be competent and on October 27, 2006, the trial court sentenced Plumley to serve four years for

each of the three counts of forgery, with the sentences to run consecutively. In sentencing Plumley, the trial court found no mitigating factors, but found Plumley's lengthy criminal record to be an aggravating factor. Plumley now asks us to review this sentence.

Discussion and Decision

I. Standard of Review

Indiana Appellate Rule 7(B) states that "[t]he Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, we have authority to "revise sentences when certain broad conditions are satisfied." Neale v. State, 826 N.E.2d 635, 639 (Ind. 2005). When determining whether a sentence is inappropriate, we recognize that the presumptive or advisory[1] sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." Weiss v. State, 848 N.E.2d 1070, 1072 (Ind. 2006).

II. Appropriateness of the Sentence[2]

Here, Plumley was sentenced to four years for each count of forgery, all Class C

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[1] Our legislature amended our sentencing statutes to replace "presumptive" sentences with "advisory" sentences, effective April 25, 2005. Weaver v. State, 845 N.E.2d 1066, 1070 (Ind. Ct. App. 2006), trans. denied. Because Plumley argues only that his sentence is inappropriate, we need not determine whether the advisory or presumptive sentencing statute applies to his case. Cf. Primmer v. State, 857 N.E.2d 11, 16 (Ind. Ct. App. 2006), trans. denied (declining to determine which sentencing scheme applies when result of decision is not dependant on such a determination).

[2] We note that Plumley committed these crimes at different times. The first forgery occurred on or about October 24, 2004, and the second and third forgeries occurred on or about January 16, 2005. Therefore, the three forgeries do not constitute a single episode of criminal conduct, and the trial court's sentence would be permitted under Indiana Code section 35-50-1-2. This statute indicates that for a single episode of criminal conduct not involving "crimes of violence," a defendant's total sentence may not exceed the advisory

felonies. The advisory sentence for a Class C felony is four years. Ind. Code § 35-50-2-6(a). Therefore, Plumely's sentences fall at the starting point the legislature selected for determining whether a sentence is appropriate.

Plumley argues that his sentence is inappropriate because his offenses are not heinous in nature. He believes his crimes are not heinous because they did not involve violence or the threat of violence, and because the victims were not elderly or disabled. If the crimes committed did involve violence or vulnerable victims, a sentence above the advisory sentence might be appropriate. However, the fact that the crimes were not heinous is not a justification for finding an advisory sentence inappropriate. Although nothing apparent from the record regarding the nature of the offenses renders them more egregious than typical forgeries, neither can we say that anything regarding the offenses renders them less egregious than typical forgeries. As such, advisory sentences are not inappropriate. See Weiss, 848 N.E.2d at 1072. We conclude that Plumley's sentence is not inappropriate based upon the nature of the offenses.

In regard to Plumley's character, Plumley correctly recognizes that his guilty plea does not reflect positively on his character in any significant way, as he failed to appear for his scheduled sentencing hearing and later sought to withdraw his guilty plea. See Hedger v. State, 824 N.E.2d 417, 420 (Ind. Ct. App. 2005), trans. denied (guilty plea by defendant was not considered a mitigating factor when defendant pled guilty after fleeing the jurisdiction

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sentence for the class of felony that is one level higher than the most serious felony of which the defendant was convicted.

and after withdrawing a prior guilty plea). However, Plumley believes that his sentence is inappropriate in light of his character based upon his history of mental illness. We disagree.

Plumley has previously been diagnosed with psychosis, depression, poly-substance abuse, bipolar disorder, conduct disorder, personality disorder, and impulse control disorder. It is difficult to assess the true nature or extent of Plumley's mental illness, however. One of the doctors who performed Plumley's court-ordered evaluation reported that Plumley's responses to a test he administered indicated that Plumely was faking and that the only information he was able to learn from this test was that Plumley was intentionally attempting to make himself look ill. This doctor also noted that multiple medical providers have considered Plumley to be extremely manipulative and non-compliant with medical treatments. The other doctor who assessed Plumley's competency to stand trial noted that Plumley's symptoms do not appear to be consistent with a diagnosis of schizophrenia or bipolar disorder.

Mental illness can be a mitigating factor to consider when imposing a sentence. Biehl v. State, 738 N.E.2d 337, 340 (Ind. Ct. App. 2000), trans. denied. There are several factors to consider when determining what weight, if any, to give to mental illness as a mitigating factor. Our supreme court has identified four principle factors to consider: "(1) the extent of the defendant's inability to control his or her behavior due to the disorder or impairment; (2) overall limitations on functioning; (3) the duration of the mental illness; and (4) the extent of any nexus between the disorder or impairment and the commission of the crime." Id. (citing Weeks v. State, 697 N.E.2d 28, 31 (Ind. 1998)).

Considering the first factor, Plumley has previously been diagnosed with impulse control disorder and it seems that that this disorder could certainly have affected his ability to control his actions. However, when Plumley was asked at his sentencing hearing whether he had difficulties with decisions and impulse control, he said that he did not believe so, though he admitted to having a gambling problem.

Considering the second factor, Plumley was evaluated by court-appointed psychiatrists and was determined fit to assist his attorney with his defense. This is evidence that any mental illness from which he may suffer does not significantly limit his functioning. Plumley argues that his mental illness limits his functioning because it may have caused him to drop out of school in 10th grade and because it may be the cause of his unstable work history. He offers no concrete link between his mental illness and his decision to quit school, however, or any evidence that shows that his mental illness impaired his ability to work or made it difficult for him to find a job.

Considering the third factor, it does seem that Plumley has dealt with mental health issues for quite some time, although it is difficult to determine exactly when they began. Plumley reported that he first attempted suicide when he was nine years old and that he has attempted suicide several times since then. He also reported that he first attended counseling at age fourteen to deal with issues of anger and abuse. He regularly attended this counseling for at least five years. He has also been hospitalized in psychiatric institutions on three occasions.

Considering the fourth factor, it is unclear whether or to what extent mental illness relates to the commission of Plumley's crimes, a fact that Plumley admits. See Appellant's Brief at 11. Impulse control disorder could have caused Plumley not to be able to control his impulse to commit forgery, but there is no proof or evidence that this was the case.

Although it seems that Plumley may suffer from some mental health problems, based upon the above factors, his problems have little effect on our consideration of his character. Any effect that they might have had is offset by Plumley's lengthy criminal record. His juvenile record began at age thirteen, and since becoming an adult, he has had nine convictions, including auto theft, theft, receiving stolen property, and forgery.[3] At the time of sentencing, he also had a pending forgery case in Ohio and two pending forgery cases in Wells County, Indiana. Plumley has committed several prior felonies that relate closely in nature to the current charges. In light of this significant and related criminal history, we conclude that Plumley's twelve-year aggregate sentence is not inappropriate. See Field v. State, 843 N.E.2d 1008, 1012-13 (Ind. Ct. App. 2006), trans. denied.

Conclusion

The sentence imposed by the trial court is not inappropriate in light of Plumley's character and the nature of the offense. Plumley's sentence is therefore affirmed.

Affirmed.

VAIDIK, J., concurs.

SULLIVAN, J., concurs in result.

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[3] Plumley was twenty-nine years of age at the time of sentencing.